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## CASTRO, THE UNGRATEFUL.

BY R. FLOYD CLARKE.

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IN December, 1902, the Chancelleries of Great Britain, Germany and Italy, after years spent in the tedious decorum of diplomatic correspondence calling to the attention of Venezuela the wrongs done to their respective citizens, and after Venezuela's refusal to arbitrate, proceeded to enforce those claims by bombarding and blockading the Venezuelan ports.

No sooner had the cannon thundered than the redoubtable Castro experienced a change of heart. For many years intrenched behind the interminable resources and tortuosities of Venezuelan diplomatic correspondence, he had successfully flouted and baffled the world. If high-flown protestations of morality and honor were proof of the existence of those qualities, then the Venezuelan portion of this correspondence proves Venezuela to have possessed these fine attributes to a marked degree. Curiously enough, in all her concessions Venezuela inserts a clause stipulating that no matter what infamy may be perpetrated upon the *cessionnaire*, he shall never have recourse to international redress. This is known in International Law as the "No Reclamation Clause." It should be renamed the "Venezuelan Immunity Bath." The great nations have insisted that this clause, being against public policy, is not binding and no shield to any gross injustice. But to a Venezuelan diplomat nothing can be more outrageous than a discussion of the equity of the case, when the despoiled citizen of the foreign state has thus placed himself in Venezuela's hands.

Patience having reached its limit, even the formidable shield of the Monroe Doctrine, *plus* this Immunity Bath, could not prevent legitimate consequences. The blockade began and Venezuela, on her knees, begged for arbitration.

To those who are unfamiliar with Venezuelan conditions, it may seem a strange thing that the explosion of a few shells and the blockade of her ports should so quickly have brought the Venezuelan Government to terms. The "man in the street" predicted that nothing would be accomplished, as there was nothing to be harmed by bombardment, and no permanent occupation of the country could be attempted except at prohibitive cost of blood and treasure. Those who so figured the situation overlooked the peculiar nature of Venezuela's weakness. Because of a century of misgovernment she has no diversification of industries. To a large extent she depends for subsistence, even for the foodstuffs, such as flour, upon her imports, while her cattle exports are her main dependence. The revenues raised by taxation practically consist only of the import and export duties.

The Dictator can exist only by feeding and paying his army. Stop the customs dues and you drain the life-blood of Venezuela's political constitution. "No pay, no army, no Dictator" is the law of Venezuelan politics. The moment, therefore, that the allied Powers blockaded the Venezuelan ports Castro faced bankruptcy, and bankruptcy meant ruin for Castro.

Then ensued a situation as acute and undignified as anything outside of opera bouffe. Having, only a few days before, rebuffed and insulted the European Powers, who thus resorted to the Big Stick, the redoubtable Castro in effect abdicated responsibility. We find in the Venezuelan Yellow Book, under date of December 16th, 1902, a petition from eleven Venezuelan citizens requesting the Citizen-President Castro to give full powers to the United States Minister "to take the necessary steps to arrange the difficulty in the manner least prejudicial to the country."\*

Then backed by the consent of the Hon. John Hay, United States Secretary of State, that he should act as intermediary for Venezuela, there sprang into prominence, in the person of Mr. Herbert W. Bowen, United States Minister in Venezuela, a kind of sovereignty hitherto unknown in the family of nations. Mr. Bowen's diplomatic notes to the allied Powers, speaking *ex cathedra* with all the authority of a sovereign, backed by unlimited armies and navies, caused ripples of merriment in the halls of the various Chancelleries; but they produced effects,

\* Venezuelan Arbitrations of 1903, Ralston's Report, 1,032.

and the Venezuelan Arbitrations of 1903 resulted. Undoubtedly, the majestic figure of Venezuela's mighty neighbor of the north waiting, portentous, in the background, absorbed in pious contemplation of the Monroe Doctrine, commanded some sort of vicarious respect for the fulminations of this temporary potentate and insured the results attained. At any rate, whatever Venezuela may have thought of her debt of gratitude at the time, those who know the physical truth that out of nothing comes nothing know that whatever need of consideration she then received at the hands of her outraged foes was due to the friendly offices of the Government of the United States.

That corporations have no souls is an axiom of the common law. Subsequent events appear to have proved that sovereignties, at least as exemplified in Cipriano Castro, President of Venezuela, have no souls or, at any rate, no gratitude. In the short space of the few years that have passed since the grievous hand of war was lifted from her coast through our intervention, Venezuela, in the person of Castro, has perpetrated acts of injustice and oppression against American citizens, so gross and so unwarranted as almost to surpass belief. Against these our State Department has repeatedly made strong remonstrances; and not merely once, but four times, has this Government categorically requested a submission to arbitration of these disputes, and as often has Cipriano Castro flatly and insolently refused arbitration. Of the five claims presented, that of the United States and Venezuela Company happens to be, both as to its facts and the law applicable, the clearest and simplest of all the claims of American citizens against Venezuela.

A short summary of the salient facts will suffice to show that the claim of the United States and Venezuela Company against Venezuela presents a clear case of spoliation by Venezuela without justification or excuse.

In 1900 some American gentlemen interested in paving matters, desiring to find an asphalt deposit equal to the celebrated Trinidad Lake, despatched to Mexico and Venezuela George W. Crichfield to explore and report. At a place called "Inciarte," about seventy miles to the westward of Maracaibo, Crichfield found a splendid asphalt lake. He contracted to purchase the mine from its Venezuelan owners and applied to Cipriano Castro, Provisional President, for a concession for a

railroad, with the stipulation, without which the property was valueless, that the enterprise should be free from taxes.

On April 20th, 1901, in consideration of the payment of 50,000 bolivars and the building of a railroad, etc., which, at the end of fifty years, was to become the property of the Government, a concession was granted by Cipriano Castro, Provisional President of Venezuela, to George W. Crichfield. Thereby Crichfield was authorized to construct a railroad from the asphalt mine at Inciarte to navigable water on the banks of the River Limon, to dig canals and deepen and improve waterways, to use the railroad in connection with the mine mentioned, and to establish depots and warehouses, etc. It was further agreed that during the term of the concession, which was to last fifty years, the enterprise was to be exempt from all national taxes and contributions, including import and export duties.

Thereupon the purchase of the asphalt mine was completed. The United States and Venezuela Company was organized under the laws of New Jersey, and took over the concession and proceeded to develop the property.

The record of the company in Venezuela as an honest business enterprise is of the highest. Neither scandal nor bad faith is attached to it. The road was built through forests, swamps and almost impenetrable jungles. Through water and mud breast-deep, in the furnace-heat gloom of tropical forests, Crichfield and his assistant, David Fleming, fighting against malaria, insect pests peculiar to the country—whose attacks are intolerable and almost fatal in their effects,—the dread dengue and yellow fever, snakes and Indians, overcame almost insuperable difficulties, and pushed the road-bed and its bridges until a railroad connection was made between the mine and navigable water. It is a story of American grit, indomitable pluck and triumphant success. The River Limon was improved by blowing up rocks and removing trees. Across the bar at its mouth a canal more than one and a half miles long was dug. At its junction with the Sucuy a railway terminus was made, a refining-plant, saw-mill, residences and office-buildings were erected, and a village created. What was once a trackless wilderness was opened up for settlements, clearings were made, farms located, schools established, and churches built.

The company began manufacturing operations in August, 1902,

and, except during the 1903 blockade, manufactured and shipped asphalt up to the 20th day of January, 1905. Over \$600,000 was spent in the purchase of the mine and the development of the property. The enterprise is worth not less than \$1,500,000. The asphalt lake covers ninety-seven acres, and the deposit, of unknown and incalculable quantity, is almost inexhaustible. During the twelve months of 1904 the company earned a net profit of \$84,119.57 or over five and one-half per cent. on its total capitalization of \$1,500,000.

But the storm was brewing. On July 22nd, 1904, under color of judicial proceedings, Castro seized, through his receiver, Carner, the plant and property of the New York and Bermudez Company. Since that date the Venezuelan Government has practically been manufacturing asphalt and selling it in the United States on conditions under which the receiver is crediting to the owners of the property, under the court's decree, the ridiculous price of five dollars a ton—the balance of the profit going to an as yet judicially undiscovered beneficiary. Prior to this seizure of the Bermudez Lake the United States and Venezuela Company, as the owner of the Inciarte Asphalt Mine, and the New York and Bermudez Company, as the owner of the Bermudez Lake, had been in active competition throughout the United States. As soon as Castro thus entered the field, and the force of this competition was felt against the industry of his receiver, Mr. Carner, a very simple plan was devised whereby such competition should be eliminated. On January 23rd, 1904, a new Mining Code had been promulgated, under which a hectare tax of forty cents annually—four times the former tax—was imposed, and a further tax of "three per cent. on the gross product of the mine." On June 21st, 1904, by Executive Decree, a duty of four bolivars (eighty cents) was levied on every ton of asphalt exported, and a further provision was made that "the contractors must pay as a minimum to the Government of the Republic twenty-five per cent. of the net product of the exploitation of said mines."

Thereupon the Venezuelan Executive proceeded to enforce against the United States and Venezuela Company the increased hectare tax—the three-per-cent. tax on the gross product of the mine and the eighty-cents tax on each ton exported—the tax of twenty-five per cent. of the net product being left to future

exploitation. In enforcing the three-per-cent. tax they valued the asphalt at twenty dollars per ton at the mine, the tax thus yielding sixty cents a ton. Note the difference between this figure and the five dollars per ton credited to the Bermudez Company in the receivership operations. In addition the Government levied the usual duties on imports and held them in the Custom House.

The company forthwith protested and, finding its protests unheeded, offered to pay the new taxes under protest until the matter could be settled. The only answer made was that all payments must be made, not only without protest, but with the express admission that the tax was properly imposed, and that, if the *cessionnaire* had any grievance, it must go to the Venezuelan Courts.

The company's claim that its enterprise was free from these taxes was based on the twelfth and thirteenth articles of its concession, which read as follows:

"Article 12: Neither the enterprise to which this contract refers, nor the products of its mine, can be burdened with any kind of national taxes or contributions. . .

"Article 13: The contractor is allowed to enter free of import duties and free of any other tax through the Custom House of Maracaibo all the material for the construction of the road, rolling-stock, tools, machinery and all other things required for the working of the mines and the refining and transportation of their products."

Finding no relief, after various petitions and memorials to the Venezuelan Government against these illegal impositions—impositions which, under the penal clauses in the acts, would result, on the company's default, in putting it in the power of the Government to confiscate the mine and the railroad and to cancel the concession,—the company, in January, 1905, shut down its works and applied to the State Department of the United States of America for redress.

So far as known, it appears that no claim is made, on behalf of Venezuela, of any right thus to cancel this concession and put the company out of business, excepting a claim to the effect that, although this concession was granted by Cipriano Castro as Provisional President, the concession is invalid because not approved by the National Congress. As, in fact, Castro is a Military Dictator, ruling Venezuela as such under the masquerade of a

Constitutional Republic, this contention involves a grim joke—Castro, Dictator, so-called Constitutional President, repudiates Castro, Dictator, so-called Provisional President; Philip drunk, with the loot of 50,000 bolivars and a \$600,000 railroad, repudiates Philip sober, whose fair promises and pretensions induced the investment.

The company, however, meets the contention on its alleged merits as follows:

First: If any Venezuelan Constitution applies, then its requirements have been fully complied with. On February 5th, 1902, the Venezuelan Congress passed a resolution whereby it was agreed:

“First: To give our approbation to all of the acts executed by the Citizen-General Cipriano Castro during the period in which he has exercised the provisional Presidency of the Republic.”

Among the acts executed by Castro during this period was the concession thus granted to Crichfield and assigned, with Venezuela's consent, to the United States and Venezuela Company, on file in the public documents and archives.

Second: There was no Venezuelan Constitution in force in 1901 when this concession was granted. Castro's rebellion against Andrade was based on the claim that Andrade's constitution was contrary to the first principles of right and justice. Castro, as the Military Head of the successful revolution against Andrade, united and exercised in himself all executive, legislative and judicial powers, untrammelled by any constitution. No constitution was in existence until, in 1904, Castro's Constituent Assembly passed a new constitution. Meantime, on April 20th, 1901, this concession was granted, which provided that the contractor should begin work within six months and should complete it within one year after commencing it. According to this provision, the money was expended and the work completed before any new constitution was adopted. What stronger equitable estoppel against the insistence by the Government upon the technical legality of a Congressional approval could exist than this? How, then, could any constitution, new or old, affect the company?\*

Castro, however, having entered into the business of manu-

\* *Michigan vs. Flint & Pere Marquette R. R. Co.* (1891), 89, Michigan, p. 481.



facturing and selling asphalt, imposed taxes which put his competitor, the United States and Venezuela Company, out of business. Had the company desired to pay the duties and go on, it could not do so, because the Government refused to accept payment under protest. Payment without protest would have waived the company's rights under the concession. Once concede the propriety under the concession of the new taxes imposed, and further exactions, at the discretion of the Dictator, would have followed without the possibility of the company's having a legal defence thereto.

Under such circumstances, is the American Government to stand by and allow its citizens to be thus despoiled without action? Powerful enough to crush in a moment the pigmy who perpetrates this injustice, its only reason for inaction seems to be the fear that the disparity of force, if it took action, would make this Government appear as a bully. It is time that the facts should be recognized and stated without mincing words.

The Government of Venezuela is not a government such as exists in our nations of more advanced civilization. Masquerading under a written constitution, whose provisions for balancing the powers of government and assuring freedom and procuring justice compare favorably with our own, we have a Military Dictatorship moulded and wielded in all its Departments, Executive, Judicial and Legislative, by one man of passionate character and sordid aims. The Venezuelan Constitution and Laws are mere bits of waste paper, fit to conjure with or disregard, as the convenience or interests of the Dictator may require.

Not many years ago several large American enterprises existed in Venezuela. With the sailing from Maracaibo last summer of David Fleming, Manager of the United States and Venezuela Company, the last American representative of an American enterprise departed those inhospitable shores. Each and all have been driven out by Government exactions—breaches of Governmental good faith.

To accord to such a sovereignty, whose moral perceptions are far below the standards of civilized nations, the presumption of honesty and good faith arising from equality of sovereignty—such as would be extended to nations of higher ethical standards, Germany or Great Britain, for instance—is to be misled by a legal fiction, and to blind ourselves to the glaring facts.

That Congress, therefore, should insist that the Executive enforce upon Venezuela the arbitration of these claims, even though to secure such arbitration the use of a "Mailed Fist" should be required, is demanded by every principle of right and justice, and by every consideration of self-respect. It is not the application of the Big Stick. For the United States does not (as it has the power to do) say, as Great Britain and Germany said in 1903: "Admit your liability and pay the damages the arbitrators assess." But it says: "Submit the issues involved to an impartial tribunal." What could be more fair? What more equitable? What more magnanimous?

And shall the mere fact that the offender, who thus denies redress in the premises is a weakling, prevent our Government from enforcing justice and right in the premises? The question answers itself. "*Civis Romanus sum*" was the passport and safeguard of the lives and property of the citizen of ancient Rome throughout the world. Let it be said of this great new Power that "*Civis Americanus sum*" shall likewise be a passport and a safeguard—at least throughout Latin-America, which exists only by virtue of our power and strength in upholding and enforcing the Monroe Doctrine.

In 1895 President Cleveland's message brought this country and Great Britain close to the verge of war. Over what? The insistence by the United States that Great Britain should arbitrate the disputed boundary between her colony and this same Venezuela. A country which forced the issue that international disputes must be settled by arbitration to a point threatening war between the two great English-speaking nations should not shrink from forcing the beneficiary of that interference into taking a dose of his own, at that time welcome, now not so palatable, medicine.

As we were bold enough then to beard the British Lion in defence of Venezuela against the suggestion of unfairness arising from the refusal of Great Britain to arbitrate the dispute between them, so now we should have sufficient constancy not to be deterred from forcing this petty potentate to arbitrate his dispute with us, merely because of possible criticism that we have misused the material power which is in us, to compel this fair result.

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